

**OPEN SPACE COUNCIL**  
September 12, 2012, 9:00 a.m.  
Legislative Hall  
Senate Hearing Room, Second Floor  
Dover, Delaware

**ATTENDANCE**

Council Members:

John R. Schroeder, Chairperson  
Paul Boswell, Esq.  
George Bunting, State Senator via teleconference  
D. Wayne Holden  
David Humes

Ex-Officio:

Jeffrey W. Bullock, Secretary of State, DE  
Charles A. Salkin, Parks & Recreation, DNREC

Advisory To:

Secretary Collin O'Mara (not present)

Visitors

David Ennis  
Guy Kramer  
Richie Jones, Delaware Chapter of The Nature Conservancy  
Marlene Mervine, Nanticoke River Watershed Conservancy

Staff:

Eileen Butler, Parks & Recreation, DNREC  
Matthew Chesser, Parks & Recreation, DNREC  
Richard Phifer, Fish & Wildlife, DNREC  
David Saveikis, Director, Fish & Wildlife, DNREC  
Elena Stewart, Parks & Recreation, DNREC  
Ron Vickers, Parks & Recreation, DNREC  
Rose Ryödi (support), Parks & Recreation, DNREC

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I     Call to Order/Announcements

Mr. Schroeder, Chairperson, called the Open Space Council meeting to order at 9:06 a.m. He welcomed Council members, staff and visitors. He asked visitors to sign the attendance sheet.

II    Approval of Meetings Minutes

Council deferred approval of the June 6, 2012 meeting minutes due to a lack of a quorum. Council agreed to call Senator Bunting later in the meeting during the Executive Session to vote on the Open Space Project Recommendations portion of the meeting.

### III Financial Report

Mr. Vickers presented the Financial Report:

The remaining FY2012 Realty Transfer Tax is \$7,549,055.65.

There were seven previously approved projects totaling \$1,431,000.00. There are four anticipated reimbursements: J. G. Townsend \$227,577; Rockford Woodlawn \$100,000; Delaware Nature Society \$50,000; Yardley Dale \$829,400; leaving an available balance of \$7,325,032.65 through 12/15/2012.

New Realty Transfer Tax funds for FY 2013 are \$9,000,000.00 available 12/15/2012.

Two properties settled since June 6, 2012 Council meeting

- Nanticoke Wildlife Area - Royal Property
- Mispillion Harbor Reserve - Swain Property

Since 1990, the Open Space Program completed 346 projects, protecting 53,331 acres, using \$243,215,536.20 of Open Space funds plus \$73,973,661.37 of other fund sources for a total of \$317,189,197.57.

### IV Agency & Public Presentations

Mr. Schroeder asked for announcements, comments, and/or presentations from guests and staff. He asked visitors to introduce themselves and identify their affiliation.

Mr. Vickers said the agency is working to get meeting packages to Council members prior to meetings. The agency typically sends out the agenda and minutes before a meeting but holds back on the project summary and maps. From now on, Council will receive the project summary at the same time as the agenda and minutes. Council must note however, that the projects are **confidential** until voted on at a Council meeting. The aerial maps and photo files are too large to send as an email attachment so they will be distributed at the meeting.

Mr. Schroeder said this gives Council members the opportunity to review projects prior to Open Space meetings and to give them the opportunity to come prepared with ideas and questions.

Mr. Boswell said he would like to see the projects prioritized.

Mr. Richard Jones, new Delaware State Director for the Nature Conservancy, introduced himself.

Ms. Marlene Mervine, Nanticoke River Watershed Conservancy, introduced herself.

Mr. Guy Kramer, a student from the University of Delaware's Energy and Environmental Policy Department, introduced himself.

Mr. Schroeder introduced Mr. David Ennis, a former State Representative from New Castle County, who now lives in Lewes, Sussex County.

Mr. Ennis referred to a letter he had written to Council two months ago outlining six substantial questions on procedures that DNREC staff should have followed up on the Open Space property in Lewes [former University of Delaware property]. He said there ought to have been first policy discussions at the Open Space Council level, whether this kind of action should have taken place.

Mr. Ennis, a resident of Lewes for 17 years, said a small cadre of people living close to this property, held substantial discussions on this matter. The group identifies itself as CALL (Citizens Advocating a Livable Lewes). Discussions centered on the ultimate use, or potential use of the open space property acquired in 2002 from the University. CALL had two representatives come before this council two years ago to voice their concerns regarding the potential use of the

property. Following that meeting, Council sent a letter to the DNREC Secretary. Mr. Ennis offered a copy of the letter.

Mr. Ennis said, if he reads the law correctly, Council is supposed to give advice to the Secretary. He believed some things happened in Lewes that did not receive Council's advice and counsel first.

He also noted that funds were appropriated in 2007 for a connecting roadway through the Open Space property. Some of the residents of Lewes are concerned about this because of walkers and bicyclists using this same area.

He continued that the former Open Space Council Chair sent a letter dated 2/11/11 to the Department Secretary with three particular points:

1. That U of D and DNREC staff prepare recommendations and conduct a public meeting with the City of Lewes for the public to hear what their plans are. A public meeting has not taken place, to date;
2. That the U of D and DNREC staff prepare a plan for any contemplated land and/or funds transfer; and;
3. That U of D and DNREC staff give final plans to the Open Space Council, upon which Council will make recommendations to the Department Secretary with the opportunity for public comment.

Mr. Ennis said he believed there were unresolved problems with the insertion of the epilogue language from the 2010 Bond Bill used for the 2011 Bond Bill. He believed the insertion of this epilogue language was inappropriate because the ideas and discussion did not come before this Council first. He also noted that the same language was scheduled to go into the 2013 Bond Bill but was removed. He understands there is a lawsuit over the issues that are cause for concern in Lewes. He said Council should take a serious look at this ongoing problem, He would be happy to work with members of this Council.

Mr. Schroder asked Council for questions.

Mr. Holden said the acreage involved in some of these discussions seems to have run from a 25-acre range to a 50 to 60 acre range. As a member of this Council, he never knew that the amount of acreage had changed. The change was never brought before this Council. Who changed the acreage and why? Did anybody appraise this land and, if so, who asked for the appraisal? As the ultimate overseer for recommendations, was this Council offered a copy of the appraisal?

Mr. Holden continued: There is great concern in Lewes when any type of land swap is being considered. This land was preserved in Sussex County as part of the larger Great Marsh and Prime Hook Wildlife areas. It involves about 4,000 acres with tens of millions of dollars invested. The request in the Bond Bill would have allowed for a land swap for some acreage, possibly land in New Castle County, that had no connection to the Great Marsh area. It did not make sense to do this at that time and many people in Lewes still feel the same way. Why are lands in Lewes being given up to protect land in New Castle County, that U of D may not even want anyway? I want to see the rationale for this and I believe the Lewes public should have the opportunity to voice their opinion.

Mr. Salkin said: I really cannot say much because we are in the midst of a lawsuit. Much of this information you are asking about, and the points Mr. Ennis brought up, are included in this lawsuit. Until this is resolved one way or another, I cannot speak on anything that is germane to the proceedings. I could however, answer two of Mr. Holden's questions.

1. We continue to have ongoing discussions with the U of D on a range of options for the land in Lewes. There has never been a specific acreage - these were starting points. Even though we have heard of different numbers, there is no proposal at this time for a land exchange. We are continuing to talk with the neighbors about a variety of issues related to land, wind turbines, roads, cooperative management, and bike trails. These discussions are proceeding. There is nothing on the table that I could share with you that would represent a position from either party. We have to wait until these discussions continue and are completed;
2. We did have appraisals done on the property, but they are now out of date. These appraisals are no longer relevant because they were appraised on a much wider range of options. Information is available to members of the council who are curious. It is not relevant to any particular proposal because there is no proposal yet.

Mr. Holden said he would like the assurance that some type of framework be worked out and there be some public oversight. He wants the Council to be involved in the process.

Mr. Salkin said that in discussions with all parties, it was made clear that when there is something that represents a framework, it should be brought before the Council, the Lewes City Council, and to public session. We are committed to that, but we are just not at that point yet.

Mr. Schroeder said this issue was raised at prior meetings with minutes to back it up. He believes all members of the Council feel that at any time Open Space land is going to be used for something other than what it was acquired, that in addition to discussions that took place at the time it was voted upon to acquire property, it should be brought before Open Space Council for advice and consent first. He believes Council members were blindsided by the Bond Bill language. He understands that U of D wanted the language and he understands how language sometimes gets into the Bond Bill. He believes that it is imperative that we have transparency and that Council always be aware of these types of issues.

Mr. Schroeder said about the road development, it has been an issue since he was in the legislature. When the property was acquired, it was understood there would be a road there. The U of D was on board, the City of Lewes was on board, and the State of Delaware was on board - eleven years ago. He does not know why there is still no road. He knows that many people would like to see a road.

Mr. Salkin said the road project was never fully funded. We are very close to having final plans and specifications from the engineering consultants. We are working with DelDOT to determine the best way to utilize the funds we have to start this project. This project was delayed for the last three years due to lack of funds, but it is moving forward slowly. The City Council has re-endorsed it loudly and clearly and we are doing everything we can to move along with the resources we have. This project is unrelated to any Open Space Council issue but woven in because of its location.

Mr. Chesser noted that semi-final plans and specifications will be ready by the end of September.

Mr. Schroeder asked if there is a route.

Mr. Chesser said there is a proposed route.

Mr. Ennis asked if this route was ever discussed in a public forum in Lewes.

Mr. Salkin said no, but there are plans to do that once the plans are ready.

Mr. Chesser said DelDOT conducted a workshop to discuss the road.

Mr. Ennis said DelDOT never invited citizens of Lewes to the public workshop and, if it did, he would like to have the date and a list of who attended the workshop.

Mr. Ennis directed Council to a letter from the Department dated February 3, 2009, sent to an attorney with the City of Lewes. The letter reads in part...

The State and U of D have agreed that the State will transfer the property to the U of D so that the U of D, in its joint venture, may have access to the property before the ultimate conveyance. The Department of Natural Resources has recorded and enclosed an amendment to an existing easement that establishes the dredge spoils area. As you can see, the amendment conforms to the U of D's ability to use the property in any lawful purpose including the construction of a wind turbine on the site.

Mr. Ennis said he has a copy of the amended easement and there is no mention of a wind turbine. It does say "any lawful purpose." This allows for the creation of a facility that never existed in the City before. He said he is not arguing that this Council is responsible, but that the letter carries a lot of weight and he believes this is the kind of communication that should have come before the Council before it was submitted.

Mr. Holden said the Council goes through a process. It accepts the evaluation of staff as to the merits of land acquisitions. Personally, he believed it would be a controversy for Council to undo and recommend that land be taken out of Open Space purview. The Council represents the citizens of Delaware, and the people expect us to have a voice for them with the State. To take a piece of this land, that we have put through a process, that was strongly recommended by the Department, and then undo it, is unacceptable. The wind turbine is a commercial site; a for-profit company is operating it. It is on State land that was still earmarked as open space land. This is wrong. You can paint it white and make it look like an angel. One cannot put enough paint on it - it is ugly.

Mr. Holden continued that he would like to see a policy established that sets up a process that deals with lands protected through Open Space that are considered for conversion to other use. It should prohibit the transfer of property by epilogue language. He knows that many things are done this way by the legislature at midnight on June 30, with no accountability. He does not think that is what is expected of the Council. He thinks Council deserves better treatment from staff and he knows the citizens of the State of Delaware deserve better treatment from staff.

Mr. Schroeder said he would like a response from the Department on the use of Open Space lands acquired through this Council, post-acquisition.

Mr. Salkin said he would review the statute.

Mr. Schroeder said he did not want to wait until another quarter. He would appreciate it if Mr. Salkin would get back to him within a month with what the statute clearly states is the Council's responsibility once properties are acquired and what can be done with Open Space land without the Council's involvement. He would like some resolution to this issue by the next meeting.

Mr. Salkin said that he would be happy to address this issue. Nevertheless, the only thing he cannot speak to, is the General Assembly and its right to act under its own rules.

Mr. Boswell said there is language now in the enabling legislation that requires Open Space Council's recommendation for actions related to acquiring open space and any conversion of use. The epilogue language was not submitted to the Council. It seems if the role of Council was going to be changed; it would have to be changed by legislation. This would be up to the General Assembly in the final analysis to explain our role.

Before moving into Executive Session, Mr. Vickers requested a recommendation, for public record, that Council attempt to contact Senator Bunting via conference call to join us for discussions on the projects for approval.

Mr. Vickers also requested Richard Jones, Delaware Chapter of The Nature Conservancy, to sit in on the Executive Session, for one project his agency is working on.

Mr. Schroeder asked for a motion from Council to allow Mr. Richard Jones to remain for part of the Execution Session to explain a property and for Council to communicate with Senator Bunting via teleconference. The motion carried.

V Executive Session - Discussion of Site Acquisition Contracts

The Council adjourned to Executive Session at 09:46 a.m. to discuss site acquisition contracts. The Council returned to Open Session at 10:55 a.m.

VI Project Recommendations

Based on discussion in Executive Session, the Council recommended the following:

- A. **Camp Arrowhead Property:** 82.7-acre conservation easement on uplands at Camp Arrowhead and 74 acres of wetlands donated in fee, to the State as an addition to the Angola Neck Preserve area. Council moved, seconded, and agreed to recommend to the Secretary to purchase the conservation easement for \$1,882,000.
- B. **Durham Property:** 98.5-acres of forestland, fields, and wetlands; eliminates a planned 40-lot subdivision; addition to the James Branch Nature Preserve near Trap Pond State Park. Council moved, seconded, and agreed to recommend to the Secretary to purchase in fee the property for \$926,000.
- C. **DuPont Property:** 30 acres of mature forest adjacent to White Clay Creek State Park. Council moved, seconded, and agreed to recommend to the Secretary to purchase in fee, the property at a 10% bargain sale off the full fair market value of up to \$1.1 million pending appraisal; if the appraisal was lower, then a 10% bargain sale off the appraised price was recommended.  
  
Mr. Vickers informed Council that staff would conduct a special meeting in October, if necessary, for the duPont property acquisition, pending negotiations. Council requested it be informed of any negotiated price.
- D. **CC Arts Property:** 1.6 acres fee purchase of open land plus 3.7 acre conservation easement on built land near Auburn Heights project; seek FEMA matching funds. Council moved, seconded, and agreed to recommend to the Secretary to purchase the fee portion and conservation easement for \$176,225.52

Senator Bunting thanked Council and said this may be his last meeting with them. Council thanked him in return.

Chairman Schroeder said discussions were held with the Secretary on the initiative of trying to leverage Open Space funds in a way that Council could maximize its funds similar to Agricultural Land Preservation funds.

Mr. Salkin said some of those discussions have continued. Secretary O'Mara worked aggressively on proposals in the spring, when Legislature was still in session, but that did not go anywhere. In the next 30-days, the Department will be formulating its legislative policy priorities for the coming session. This is high on the policy agenda, to continue. It would be ideal to have the Secretary on the Open Space Council agenda for the December 5 meeting.

Chairman Schroeder said he would like the Secretary to attend the next meeting now that Council has received more funds than expected (\$9 million). We must not forget there is still land out

there to preserve that Council would be interested in and that it need not be bought fee-simple.  
The other issue is the U of D.

VII Next Meeting and Adjournment

The next Open Space Council meeting will be held at Legislative Hall, Second Floor, Senate Hearing Room, Dover, DE 19901, on December 5, 2012, starting at 9:00 a.m.

Mr. Schroeder asked for a motion to adjourn. The meeting adjourned at 11:06 a.m.